IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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| STATE OF WASHINGTON,<br>Plaintiff,<br><br>vs.<br><br>MATTHEW H. RICHARDSON,<br>Defendant,<br><br>MIKE SIEGEL,<br><br>Intervenor/Appellant. | ) | No. 85665-6<br>(King County Superior Court<br>No. 93-1-02331-2)<br><br>MOTION FOR<br>DISCRETIONARY REVIEW |

## I. IDENTITY OF PETITIONER

Mike Siegel (hereinafter "Siegel") was granted the right to intervene for the limited purpose of moving to unseal court records the trial court in this case had sealed in 2002, after the case concluded. Siegel's Motion to Unseal was denied on January 25, 2011, and he was denied appeal as a matter of right on March 11, 2011. He was directed to file this Motion for Discretionary Review by March 28, 2011.



ORIGINAL

## II. DECISION BELOW

The Defendant was charged and tried as an adult in King County Superior Court in 1993 for a crime involving sexual misconduct, but it is impossible to ascertain the exact charges. **See** Declaration of Chris Roslaniec (discussing attempt to obtain information or pleadings from King County Superior Court). In 1993, Richardson entered an Alford plea and was sentenced to 240 hours of community service and ordered to pay court costs and victim assessment in addition to $950 for counseling costs of one of the victims. **See Appendix A** (Declaration of Mike Siegel at Exhibit A, August 9, 2010 Seattle Times article discussing case. Again, actual case filings cannot currently be obtained from the Court as the entire file is sealed and the docket is not made available in paper or electronically). In 2002, nine years after conviction, the Honorable Judge Gain sealed the entire criminal court file, apparently "expunged" the record and the docket thereafter was deleted and the case name masked or deleted such that the public would not discover the case if it searched for it. Richardson was then, or thereafter became, a teacher, having obtained a teaching certificate from the Office of Superintendant of Public Instruction; ran for and was elected to serve as a City Councilman; and in November 2010, ran unsuccessfully for a seat in the Washington State House of Representatives. It was discovered during the election campaigns

that Richardson had the 1993 conviction for a child sex offense and the fact that all records related to such conviction had effectively been shielded from public view.

On October 19, 2010, Siegel , a journalist and radio talk show host, filed a motion for order authorizing limited intervention into the criminal case to file a motion for unsealing of the records, and a separate motion for unsealing of the record. Both motions were originally noted before Judge Sharon Armstrong, Chief Criminal Judge of the King County Superior Court.

On October 27, 2010, Judge Armstrong entered an order granting Siegel intervention for the limited and sole purpose of filing a motion to unseal. **See Appendix B** (Order granting intervention). Judge Armstrong's order also directed Siegel to re-note his motion to unseal before Judge Brian Gain who entered the original sealing order in 2002. Judge Gain entered an order on Jan. 25, 2011, summarily denying Siegel's motion to unseal without explanation.[1] **See Appendix C** (Order denying Motion to Unseal).

All of the court filings, including all pleadings filed in connection with Siegel's intervention and sealing motion, are apparently "sealed:" in

[1] The motion to unseal before Judge Gain was heard without oral argument.

the entirely sealed court file. **See** Roslaniec Decl. The docket remains deleted or inaccessible and the trial court will not provide any information about the existence or nonexistence of this case or access to any of the court records. **Id.** For this reason, the records filed herewith as Appendices are Siegel's personal copies of records he filed or received from Richardson in connection with the sealing and intervention motions. Siegel cannot to this day obtain a docket or copies of any of these records from the trial court. **Id.**

## III. ISSUE

Whether Siegel should be granted discretionary review of the denial of a Motion to Unseal records in a case which has been long concluded and where his sole involvement in the action was to challenge the continued sealing of records.

## IV. STATEMENT OF THE CASE

The underlying case in this matter is long over; it was dismissed on February 28, 1994. **See Appendix D** (February 28, 1994, Order).[2] By order dated January 22, 2002, the Court vacated the record of conviction. **See Appendix E** (January 22, 2002, Order).[3] The matter was sealed by

[2] Because the underlying case is sealed, and Siegel obtained the documents from the underlying case from the Declaration of Matthew Richardson served on him, Appendices D, E, and F are marked with exhibit numbers corresponding to Richardson's declaration.

[3] The Order is entitled "Order Vacating Record of Conviction and Order to Seal Court File." However, the sealing portions of the order were

order dated February 20, 2002, purportedly pursuant to GR 15. **See Appendix F** (February 20, 2002, Order). The order sealing the record contains no reference to **Seattle Times Co. v. Ishikawa**, 97 Wn.2d 30, 38, 640 P.2d 716 (1982), which sets forth the test for sealing records, or complies in any way with the requirements of **Ishikawa,** Article I Section 15, GR 15, or the First Amendment to the United States Constitution.

Siegel's sole involvement with the criminal case was as an intervenor to unseal court records. The January 25, 2011, Order denying Siegel's Motion to Unseal Records and Vacate Prior Sealing Orders concluded the case and the sole basis for which Siegel was authorized to intervene. Siegel timely filed his Notice of Appeal to this Court on February 23, 2011, 29 days after the motion to unseal was denied.

In a letter dated March 1, 2011, Susan L. Carlson, the Supreme Court Deputy Clerk, wrote counsel and the King County Superior Court Clerk indicating that

> A review of the trial court's order of which review is sought indicates that a question may exist as to its reviewability as a matter of right. Accordingly, the parties are directed to provide comments to this Court as to whether this matter is properly designated as a notice of appeal or a notice for discretionary review. See RAP 2.2, 2.3, and 5.1(c).

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removed by Judge Brian Gain, and the record was instead sealed pursuant to the subsequent February 20, 2002 order.

Following comment from the parties, Ms. Carlson denied Siegel appeal as a matter of right and directed him to file a Motion for Discretionary Review. **See Appendix G**. If Siegel is denied discretionary review, he has no opportunity to obtain review of the Superior Court's denial of his Motion to Unseal, and the public will be denied its right to assure court records are open and the dictates of Article 1, Section 10 of the Washington Constitution are followed.

## V. ARGUMENT

Discretionary Review should be granted when

> (1) [t]he superior court has committed an obvious error which would render further proceedings useless;
> (2) [t]he superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;
> (3) [t]he superior court has so far departed from the accepted and usual course of judicial proceedings... as to call for review by the appellate court; or
> ...

RAP 4.2(b). Though Washington Courts have not yet determinatively addressed the issue, Siegel's argument for review could not be put more succinctly than the Illinois Court of Appeals did when addressing review of sealing of court access:

> **If we are going to permit intervention, then we need to also permit some path to review. It cannot be that important first amendment issues are decided by trial**

> **courts and then insulated from further review. That makes no sense.**

**People v. Kelly**, 397 Ill.App.3d 232, 243, 921 N.E.2d 333 (2009). Here, Siegel has been denied appeal of the decision denying unsealing as a matter of right, and if he is not granted discretionary review, there simply is no avenue for review of the trial Court's decision.[4] Indeed, denial of review here would "make no sense."

This is not an interlocutory appeal and there is nothing remaining in the underlying action to be determined. The underlying case in this matter was dismissed in 1994, and the record was sealed in 2002. Siegel intervened on the limited issue of unsealing court records in October 2010, and there are no open issues in the trial court. Washington Courts recognize the right of a member of the public to intervene to challenge sealing after judgment has been rendered. **See Ishikawa**, 97 Wn.2d at 33, 44 (allowing challenge to sealing following defendant's conviction); **Rufer v. Abbott Laboratories**, 154 Wn.2d 530, 539, 114 P.3d 1182 (2005) (Washington Supreme Court review of sealing issues after trial in underlying matter had already concluded). Recently, this Court even went so far as to modify one of its earlier decisions that called intervention into

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[4] Siegel maintains that he is entitled to review as a matter of right, and requests that this Court additionally address the issue of reviewability of sealing decisions should it grant review. **See Statement of Grounds.**

question. **See Yakima v. Yakima Herald-Republic**, --- P.3d ----, 12, 2011 WL 113764 (January 13, 2011) (allowing intervention and appeal of ruling by trial court on Motion to Unseal while criminal matter is pending appeal, without leave of the appellate court, and stating "We hold that a limited intervention to revisit a prior sealing decision under GR 15(e) is a proper procedure for nonparties to use in a criminal case when a trial has been completed and we modify [**State v.**]**Bianchi** to the extent it is contrary.")

If review is not granted in this circumstance, the Court is effectively barring review of any decision where there is intervention to unseal court records, something that has been expressly authorized by this and the lower Appellate Courts. **See, e.g., State v. Mendez**, 157 Wn. App. 565, 238 P.3d 517 (2010) (expressly rejecting the argument that a separate action must be initiated to challenge the sealing of court records in a criminal action).

Here, in this long-over criminal matter, Siegel must be able to obtain review via some method, and as he has been denied appeal as a matter of right, Siegel must be granted discretionary review to vindicate his constitutional rights.

### A. As a Member of the Public, Siegel has a Constitutional Right to Open Access to the Courts which Must be Reviewable

### 1. Article I, Section 10

Under Article I, Section 10 of the Washington Constitution, "[j]ustice in all cases shall be administered openly." This provision is mandatory. **State v. Duckett**, 141 Wn. App. 797, 804, 173 P.3d 948 (2007) (citation omitted). The provision has been interpreted to mean that the public and the press have a right of access to judicial proceedings and court documents in both civil and criminal cases. **Dreiling v. Jain**, 151 Wn.2d 900, 908, 93 P.3d 861 (2004) (citation omitted); **see also Press-Enterprise Co. v. Superior Court**, 478 U.S. 1, 7 (1986) (holding that the right to an open public trial is a shared right of the accused under the Sixth Amendment and the public under the First Amendment, the common concern being the issue of fairness). This right to public access extends to pretrial proceedings, such as voir dire, suppression hearings, and motions to dismiss. **State v. Easterling**, 157 Wn.2d 167, 174, 137 P.3d 825 (2006) (citations omitted); **see also Beuhler v. Small**, 115 Wn. App. 914, 920, 64 P.3d 78 (2005) ("[Article I, Section 10] generally provides a right of access to trials, pretrial hearings, transcripts of trials or pretrial hearings, and exhibits introduced at these proceedings.") (citation omitted).

Article I, Section 10 "secures the public's right to open and accessible proceedings." **Duckett**, 141 Wn. App. at 803 (citation omitted). Further "[t]hese provisions assure a fair trial, foster public

understanding and trust in the judicial system and give judges the check of public scrutiny." **Id**. at 803 (citing **State v. Brightman**, 155 Wn.2d 506, 514, 122 P.3d 150 (2005)). The United States Supreme Court articulated the policy behind open courts:

> The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.

**Press-Enterprise Co. v. Superior Court**, 464 U.S. 501, 508 (1984) (citation omitted) (emphasis in original).

Because the courts are presumptively open, the party seeking to restrict access bears the burden of justifying an infringement on the public's right to access. **Nebraska Press Ass'n v. Stuart**, 427 U.S. 539, 558-59, 569-70 (1976). The State Supreme Court has expressly adopted this standard. **See Dreiling**, 151 Wn.2d at 909 ("The burden of persuading the court that access must be restricted to prevent a threat to an important interest is generally on the proponent [.]") (citation omitted). Although the public's right to court documents is not absolute, restrictions on access can be granted only in rare circumstances. **State v. Bone-Club**, 128 Wn.2d 254, 258, 906 P.2d 325 (1995) ("[P]rotection of this basic

constitutional right clearly calls for a trial court to resist a closure motion except under the most unusual circumstances.") (citation omitted). To meet this burden, the party seeking to prevent public access must show that:

> (1) The proponent of closure or sealing must make some showing [of a compelling interest], and where that need is based on a right other than an accused's right to a fair trial, the proponent must show a "serious and imminent threat" to that right; (2) Anyone present when the closure motion is made must be given an opportunity to object to the closure; (3) The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests; (4) The court must weigh the competing interests of the proponent of closure and the public; (5) The order must be no broader in its application or duration than necessary to serve its purpose.

128 Wn.2d at 258-59 (citation omitted). Further, the United States Supreme Court stated

> The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.

**Waller v. Georgia**, 467 U.S. 39, 45 (1984) (citation and internal quotation marks omitted).

In order for a sealing of court records to be valid, it must comply with the procedural and substantive requirements shown above. The trial court must "weigh the competing constitutional interests and enter

appropriate findings and conclusions that should be as specific as possible." **Duckett**, 141 Wn. App. at 805 (citing **Seattle Times Co. v. Ishikawa**, 97 Wn.2d at 38). Indeed, the proponent of sealing must make a showing of need, and in demonstrating that need, the movant should state the interest or rights which give right to that need with specificity, without endangering those interests. **Ishikawa**, 97 Wn.2d at 37-38. Additionally, the sealing order must be limited in its duration. **Id**. at 39.

Whether or not the trial court applied the above correct standard is reviewed de novo; in reviewing the disposition of a motion to seal or unseal, only if the proper test is applied by the trial court will the standard of review be abuse of discretion. **In Re Marriage of R.E.**, 144 Wn. App. 393, 399 n.9, 183 P.3d 339 (2008). If a reviewing court determines the trial court failed to perform the required analysis in deciding whether or not to seal records, "[p]rejudice is presumed." **State v. Momah**, 141 Wn. App. 705, 709, 171 P.3d 1064 (2007) (citations and internal quotation marks omitted). Also, the denial of the right to a public trial, because it is constitutional, "is one of the limited classes of fundamental rights not subject to harmless error analysis." **Easterling**, 157 Wn.2d at 182; **see also In Re Detention of D.F.F.**, 144 Wn. App. 214, 226, 183 P.3d 302 (2008); **cert. granted** 164 Wn.2d 1034, 197 P.3d 1185 (2008). Moreover, under GR 15(c)(3), the court must consider redaction when deciding to

seal or unseal. The judge must also identify with specificity in the sealing order, which itself must remain public under GR 15(c)(5)(C), the right at risk and the less restrictive alternatives considered.

### 2. First Amendment

The United States Supreme Court has held on numerous occasions that the public and press have a First Amendment right to open court proceedings. **See, e.g., Richmond Newspapers, Inc. v. Virginia**, 448 U.S. 555, 575-76 (1980); **Globe Newspaper Co. v. Superior Court**, 457 U.S. 596, 610-11 (1982) (declaring unconstitutional a Massachusetts law requiring closure of sexual assault proceedings involving minor victims). The United States Supreme Court has recognized that the policy considerations favoring open justice apply regardless of the nature of the proceeding, and that "historically both civil and criminal trials have been presumptively open." **Richmond Newspapers**, 448 U.S. at 580 n.17.

This policy has been echoed by the Washington State Supreme Court regarding access to Court proceedings and records:

> The open operation of our courts is of utmost public importance. Justice must be conducted openly to foster the public's understanding and trust in our judicial system and to give judges the check of public scrutiny. Secrecy fosters mistrust. This openness is a vital part of our constitution and our history. The right of the public, including the press, to access trials and court records may be limited only to protect significant interests and any limitation must be carefully considered and specifically justified.

**Dreiling**, 151 Wn.2d at 903-04. These policies fostering the openness of Courts further justify Siegel's right to appeal a denial of a motion to unseal court records or proceedings.

### B. Discretionary Review is Warranted

Siegel should be granted discretionary review because the Superior Court has committed obvious error that has affected Siegel's right to access to court records and there are no further proceedings that will take place in this criminal matter which has been sealed since 2002. RAP 2.3(a) states that "[u]nless otherwise prohibited by statute or court rule, a party may seek discretionary review of any act of the superior court not appealable as a matter of right." The Clerk of this court has denied appeal as a matter of right. Under RAP 2.3(b), the considerations governing acceptance of review include:

> (1) [t]he superior court has committed an obvious error which would render further proceedings useless;
> (2) [t]he superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;
> (3) [t]he superior court has so far departed from the accepted and usual course of judicial proceedings... as to call for review by the appellate court; or
> (4) [t]he superior court has certified, or that all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate

review of the order may materially advance the ultimate determination of the litigation."

This case merits discretionary review pursuant to RAP 2.3(b)(1), (2) and (3). Discretionary review is appropriate in this case for numerous reasons: First, courts have granted interlocutory or discretionary review in similar cases. **See Dreiling**, 151 Wn.2d at 907 (granting interlocutory review in an ongoing case "of a limited question of whether the trial court applied the correct legal standard when it sealed material [.]"); **see also Rufer**, 154 Wn.2d at 539 (discretionary review of sealing decision following the conclusion of trial). Here, Siegel is not even challenging an interlocutory order sealing court records, he is challenging an order denying unsealing on a criminal matter that has ended.

Second, as shown above, Siegel's right at issue is Constitutional in nature as it is relates to the public's right to open access to the courts under Article I Section 10 of the Washington Constitution and the First Amendment of the United States Constitution. Case law has repeatedly recognized the importance of this right. **See Landmark Comm., Inc. v. Virginia**, 435 U.S. 829, 839 (1978) ("[O]perations of the courts and judicial conduct of judges are matters of utmost public concern."). Any infringement on a Constitutional right, at a minimum, weighs heavily in favor of granting discretionary review, especially when the violations are

as clear as they are in the immediate case—though this will be addressed more fully in subsequent briefing.

### 1. The Superior Court dramatically departed from the "accepted and usual course of judicial proceedings" in numerous ways—each one grounds to have the records unsealed

Here, the court has met ground (3) by substantially departing from the requirements when sealing records that appellate review is warranted. The procedural errors in the sealing of the records in this case clearly cannot be seen as consistent with the specified Constitutional mandate. As stated above, in order to seal court records, or keep court records sealed, the trial court must apply the five part test specified in **Bone-Club** and **Ishikawa**; only if that test is met, can the party arguing for sealing or closure overcome the presumption in favor of open public access to the courts. The order being appealed in the instant case contains neither test.

Here, there does not appear to be any sealing order showing the necessary findings to justify any sealing. There is only a brief sealing order stating that the records are properly sealed pursuant to GR 15, but the order contains no analysis as to why sealing is proper. **See Appendix F**. Additionally, the lack of written findings justifying sealing is a clear violation of GR 15(c)(2), which demands that the trial court "[make] and [enter] written findings that the specific sealing or redaction is justified by

identified compelling privacy or safety concerns that outweigh the public interest in the court record." **See also In Re Marriage of R.E.**, 144 Wn. App. at 399-400 (discussing how GR 15 was significantly amended in 2006, in wake of **Rufer** and **Dreiling**). These written findings must be filed with the court, under GR 15(c)(5)(C). Moreover, under GR 15(c)(3), the court must consider redaction when deciding to seal or unseal—there is no indication this was done at all. The judge must also identify with specificity the right at risk and the less restrictive alternatives considered—neither of which occurred here. All of these violations are grounds for reversal.

Also, sealing was not the least restrictive means in protecting the interests that were allegedly threatened—this case has been completely shielded from public scrutiny, there is no part of the record that is open. The court rules mandate that the trial judge consider redaction, which apparently was not contemplated at all. **See** GR 15(c)(3). Moreover, there is nothing on the record indicating that the trial court weighed the competing interests of the parties and the interests of the public in keeping the records unsealed. There is simply an order affirming prior orders, and stating that the "the Intervenor's Motion to Unseal the court file under the provisions of GR 15, the Washington State Constitution, and applicable

case law, is hereby denied" with no analysis of what those provisions require.

### 2. Further proceedings are useless as there will be none.

Regarding ground (1) for granting discretionary review, further proceedings would be useless. Again, Siegel was permitted to intervene to challenge the propriety of sealing—he was not granted leave to intervene for any other issue. **See Appendix B** ("Mike Siegel is hereby authorized to file a motion to vacate the prior sealing order entered in the above matter[.]). It is clear from the timeline of the case, and the Superior Court's orders allowing intervention and denying unsealing, that the singular purpose of Siegel's intervention was to prevent the continued sealing of court records—there are no further issues to be determined.

To refuse appellate review in the current matter ignores the right of a member of the public to intervene in a criminal matter to seek unsealing and the fact the unsealing issues may operate independently of the criminal proceedings following a determination of guilt or innocence. **See People v. Kelly**, 397 Ill.App.3d 232, 243, 921 N.E.2d 333 (2009) (allowing interlocutory appeal of denial of motion to unseal and stating, **"[i]f we are going to permit intervention, then we need to also permit some path to review. It cannot be that important first amendment**

**issues are decided by trial courts and then insulated from further review. That makes no sense.**") (emphasis added). If, as in **Yakima v. Yakima Herald-Republic**, an intervenor can obtain a ruling on whether to continue sealing records while the underlying criminal matter is pending appeal, an intervenor is certainly permitted to seek review of an order denying a motion to unseal when the criminal case is over. Again, the underlying criminal matter here is not only over, it is over and the record regarding the proceeding has been vacated and sealed. There can be no doubt that Siegel is entitled to appeal the trial court's denial of his motion to unseal as there are no decisions left for the trial court's determination.

### 3. The lower court has committed probable error and has prevented Siegel from accessing the records.

As discussed above, the Superior Court committed probable error which is preventing Siegel from exercise of a constitutional right. This surely limits the freedom of Siegel to act as he cannot exercise a constitutional right of access to records. Therefore, ground (2) for granting discretionary review is also fulfilled.

## VI. CONCLUSION

For the foregoing reasons, Siegel is entitled to discretionary review under RAP 2.3(b)(3) as his claim is Constitutional and there has been a

final judgment in the underlying case. Because Washington Courts authorize intervention to challenge sealing, they must also allow a path to review sealing determinations. Further, the Superior Court failed to comply in numerous ways with the procedures from **Bone-Club**, **Ishikawa**, **Dreiling**, and **Rufer**, and the court rules controlling the sealing of court records under GR 15, thus the "superior court has so far departed from the accepted and usual course of judicial proceedings" to warrant review.

RESPECTFULLY SUBMITTED this 28th day of March, 2010.

ALLIED LAW GROUP
Attorneys for Mike Siegel.

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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on March 28, 2011, I delivered a copy of the foregoing Motion for Discretionary Review to:

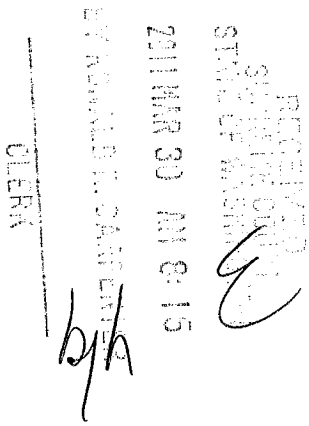
Hon. Dan Satterberg
King County Prosecuting Attorney's Office
King County Courthouse, Room W554
516 Third Avenue
Seattle, WA 98104
via legal messenger

Klaus O. Snyder & Kelly J. Faust Sovar
Snyder Law Firm
920 Alder Avenue
Suite 201
Sumner, WA 98390-1406
via email with backup via U.S. Mail pursuant to agreement

Dated this 28th day of March, 2011, at Seattle, Washington.

Chris Roslaniec

APPENDIX



IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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| STATE OF WASHINGTON,<br>Plaintiff,<br><br>vs.<br><br>MATTHEW H. RICHARDSON,<br>Defendant,<br><br>MIKE SIEGEL,<br><br>Intervenor/Appellant. | ) | No. 85665-6<br>(King County Superior Court<br>No. 93-1-02331-2)<br><br>MOTION FOR<br>DISCRETIONARY REVIEW |

## I. IDENTITY OF PETITIONER

Mike Siegel (hereinafter "Siegel") was granted the right to intervene for the limited purpose of moving to unseal court records the trial court in this case had sealed in 2002, after the case concluded. Siegel's Motion to Unseal was denied on January 25, 2011, and he was denied appeal as a matter of right on March 11, 2011. He was directed to file this Motion for Discretionary Review by March 28, 2011.

# APPENDIX A

DATE OF HEARING: _____
TIIME OF HEARING: _____
CALENDAR/DEPT: CRIMINAL

**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON**
**IN AND FOR THE COUNTY OF KING**

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| STATE OF WASHINGTON,<br><br>Plaintiff,<br><br>v.<br><br>MATTHEW H. RICHARDSON,<br><br>Defendant | Case No. 93-1-02331-2 SEA<br><br>DECLARATION OF MIKE SIEGEL IN SUPPORT OF MOTION FOR ORDER AUTHORIZING LIMITED INTERVENTION RE: MOTION TO UNSEAL |

I, Mike Siegel, hereby declare as follows:

1. That I am over the age of 21 and competent to testify to the facts alleged herein.

2. That I am a nationally syndicated radio talk show host with over thirty years of experience.

3. That I am a long-time resident of Washington State.

4. That for many years I have been actively engaged in civic and political affairs at the local, state and national level.



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5. That in the course of my civic and political participation I often provide commentary, opinions and analysis concerning the character, qualifications, and fitness for office of various candidates running for local, state and national offices.

6. That Matt Richardson is currently a councilman for the City of Sumner. Furthermore, Mr. Richardson is also a candidate in the general election for the 31st legislative district senate seat.

7. That it has come to my attention based upon a Seattle Times story dated August 9, 2010 that Mr. Richardson plead guilty to communicating with a minor for immoral purposes in 1993. A true and correct copy of said news article is attached herein as **Exhibit "A".**

8. That the above-referenced news story indicates that Mr. Richardson was later allowed to "withdraw" his guilty plea four months after it was entered and that the case file was also sealed.

9. That I am currently unable to access any portion of the court file and/or the SCOMIS Docket in the above-captioned matter, namely because of a sealing order that appears to have been entered at an unknown date.

10. That the public is being deprived of information concerning Mr. Richardson's character, qualifications and fitness for office as a result of the sealing order that was apparently entered in this case.

11. That in light of the foregoing I am requesting this Court enter an order authorizing "limited intervention" and/or "limited participation", for the sole and limited purpose of permitting me to file a motion to unseal the record in the above-captioned matter and present argument on said motion (through my counsel).



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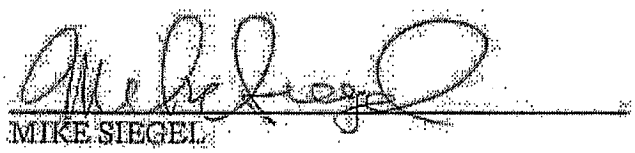
12. That I do no wish to "intervene" and/or "participate" in this case for any other purpose(s) whatsoever, other than as specified in paragraph 11 above.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED on this ____ day of September 2010 at

_____.
(City, State)



MIKE SIEGEL



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# EXHIBIT A

Originally published August 9, 2010 at 6:19 PM | Page modified August 9, 2010 at 10:31 PM



# State Senate candidate Matt Richardson, of Sumner, says he was falsely accused

**Candidate Matt Richardson pleaded guilty in 1993 to a misdemeanor sex crime stemming from allegations first made when he was a teenager.**

By Keith Ervin
*Seattle Times staff reporter*

State Senate candidate Matt Richardson pleaded guilty in 1993 to a misdemeanor sex crime stemming from allegations first made when he was a teenager.

Richardson, 44, maintains he was falsely accused. In court records, he said he pleaded guilty to put the matter behind him and avoid the risk of a harsher sentence. The charge was later dismissed and the record of his conviction vacated and sealed by the court.

As a result, Richardson is legally entitled to say he was not convicted of a crime.

The Sumner City Council member and 8th-grade teacher is running for state Senate as a Republican in the 31st Legislative District.

He declined to discuss the 1993 case. In a written statement, he said, "These false allegations against me when I was a minor, 30 years ago, have no bearing on me as an adult, a candidate, or this campaign."

The case stemmed from allegations of sexual misconduct involving two girls for up to three years ending in 1982. At that time, the girls — extended family members — were 8 and 5, and Richardson was 16.

In court documents, prosecutors wrote that when the girls' parents learned of the allegations they didn't report them to police at the insistence of Richardson's mother and other relatives.

The allegations came to the attention of police 10 years later after the girls' parents learned Richardson was working as a security guard at Meridian Junior High School and they contacted school officials. The Kent School District investigated the claims and decided "the defendant's employment should be concluded immediately," prosecutors wrote in the criminal filing.

In a plea bargain, Richardson pleaded guilty to one count of communicating with a minor for immoral purposes, a gross misdemeanor.

Richardson's "Alford plea" allowed him to avoid admitting the facts alleged by the prosecutor while pleading guilty in order take advantage of the prosecutor's sentence recommendation.

He wrote in his plea statement he had looked at one girl's private parts after asking to "play doctor" when he was 12 but didn't remember any similar incidents with the other girl.

Richardson was given a deferred sentence, ordered to do 240 hours of community service and pay court costs and victim assessment. He also paid $950 for one girl's counseling costs.



Four months later, in 1994, the court allowed Richardson to withdraw his guilty plea and the charge was dismissed, apparently after he completed the terms of the deferred sentence. In 2002 the court vacated the record of conviction and ordered the records sealed.

The Seattle Times obtained the prosecutors' statement of facts from a civil case file, and received other court documents from sources who obtained them before records were sealed.

In his written statement to The Times, Richardson said that as a teacher, Navy professor and former congressional staffer, he's passed background checks and security clearances by the FBI, the Washington State Patrol and the Department of Defense.

"With 3 court orders that dismiss, expunge, and vacate these false allegations against me, the benefit is that at least one member of the State Senate will know what it's like to be falsely accused and use this knowledge when it comes to making laws that affect the people of our state," he wrote.

# APPENDIX B

DATE OF HEARING: 10-27-2010
TIME OF HEARING: 1:30 P.M.
CALENDAR/DEPT: CRIMINAL

**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON**
**IN AND FOR THE COUNTY OF KING**

| | |
|---|---|
| STATE OF WASHINGTON,<br><br>Plaintiff,<br><br>v.<br><br>MATTHEW H. RICHARDSON,<br><br>Defendant.<br><br>MIKE SIEGEL,<br><br>Intervenor. | Case No.: 93-1-02331-2 SEA<br><br>**ORDER AUTHORIZING LIMITED INTERVENTION TO FILE MOTION FOR UNSEALING OF THE RECORD**<br><br>~~[PROPOSED]~~ |

THIS MATTER having come on for hearing before the undersigned upon the motion of MIKE SIEGEL for an order authorizing limited intervention to file a motion for unsealing of the record in the above-captioned matter, and the Court having reviewed Mr. Siegel's motion and the declaration of Mike Siegel in support thereof, ~~and~~ having ~~reviewed~~ received no response of the Defendant and the State, ~~if any,~~ and having reviewed the file and being fully determined that Judge Darvas Gain entered the order sealing, advised in the premises, now, therefore, it is hereby



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Ph. (425) 605-4774
Fax (425) 818-5271

ORIGINAL

**ORDERED, ADJUDGED and DECREED that MIKE SIEGEL'S motion for limited intervention is hereby GRANTED; and it is further**

**ORDERED, ADJUDGED and DECREED that MIKE SIEGEL is hereby authorized to file a motion to vacate the prior sealing order entered in the above matter under ~~Const. art. I, § 10, GR 15, State v. Mendez, No. 27535-3-III, Slip Op. at 3-16, 2010 Wash. App. Lexis 1878, *4-*20 (Wash. Ct. App. Aug. 19, 2010) and Seattle Times v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982) and its progeny;~~ and it is further**

before Judge Brian Gain at the MRJC (Intervenor shall give notice to defendant and PAO of date and time of the motion after contacting Judge Gain's court).

**ORDERED, ADJUDGED and DECREED that all papers filed in support of or opposition to unsealing of the record shall be filed and served upon the Defendant, the King County Prosecuting Attorney's Office and counsel for Mike Siegel.**

Dated 10-27-10

JUDGE/~~COMMISSIONER~~

Presented by:

Stephen W. Pidgeon, WSBA# 25265
Attorney for Internveor Mike Siegel



STEPHEN W. PIDGEON
Attorney at Law, PS
3002 Colby Avenue, Suite 306
Everett, WA 98201
Ph. (425) 605-4774
Fax (425) 818-5271

Copy Received, Approved as to Form:

_____
WSBA#
Deputy Prosecuting Attorney
King County Prosecuting Attorney's Office

Copy Received, Approved as to Form:

_____
Matt Richardson, Defendant Pro Se



STEPHEN W. PIDGEON
Attorney at Law, PS
3002 Colby Avenue, Suite 306
Everett, WA 98201
Ph. (425) 605-4774
Fax (425) 818-5271

# APPENDIX C

Hon. BRIAN GAIN
Hearing Date: 1/21/2011
W/o Oral Argument



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

| | |
|---|---|
| **STATE OF WASHINGTON,** Plaintiff<br>V.<br>**MATTHEW H. RICHARDSON,** Defendant,<br>**MIKE SIEGEL,** Intervenor | No. **93-1-02331-2**<br>**ORDER ON INTERVENOR'S MOTION TO UNSEAL RECORD AND VACATE PRIOR SEALING ORDERS AND CONFIRMING PERMANENT ORDER SEALING RECORD**<br>~~**(Proposed)**~~<br>**[Clerk's Action Required]** |

**THIS MATTER** having come on regularly before the court upon the motion of the Intervenor, Mike Siegel, for an Order unsealing the record herein and vacating all prior sealing Orders, and the court having considered the Intervenor's Motion, Declaration and Memorandum in support thereof, having considered the Defendant, Matthew H. Richardson's Declarations filed herein and in the companion civil case (see notes below), as well as the Defendant's Memorandum of Authorities in Opposition in the present criminal case and the below referenced civil case, Matthew Richardson v Kent School District, Cause No. 92-2-28941-5, the Response of the Kent School District to Intervenor's Motion to Unseal court file from the civil case, and the records and files herein, as reviewed by this court, the records and files in the



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SUMNER WA 98390-1406
(253) 863-ATTY - FAX: (253) 863-1483

afforementioned civil case of Richardson v. Kent School District, and the court being otherwise fully advised, it is therefore,

**ORDERED** that the Intervenor's Motion to Unseal the court file under the provisions of GR 15, the Washington State Constitution, and applicable case law, is hereby **DENIED.**

It is further,

**ORDERED** that this Court's Orders vacating the underlying charges and sealing the record are hereby confirmed ~~and shall remain permanent and not subject to any further Motion to Intervene or to unseal such records by any other party other than the State of Washington and/or its sub-agencies and/or the Defendant, Mr. Richardson. It is further~~

**ORDERED**

DONE IN COURT this 25 day of **JANUARY, 2011.**

THE HONORABLE **BRIAN GAIN**

Presented by:
**SNYDER LAW FIRM LLC**

KLAUS O. SNYDER, WSB# 16195
KELLY J. FAUST SOVAR, WSB# 38250
Attorneys for Defendant, **RICHARDSON**



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# APPENDIX D

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

| | |
|---|---|
| STATE OF WASHINGTON, Plaintiff, | NO. 93-1-02331-2 |
| vs. | ORDER OF DISMISSAL |
| MATTHEW H. RICHARDSON, Defendant. | |

This matter having come on before the undersigned judge on the defendant's motion for an order withdrawing the guilty plea previously entered in connection with the above-entitled matter; and it appearing that the defendant has met all of the terms of the deferred sentence entered in the above case and it further appearing that the interests of justice would be served by allowing the plea of guilty previously entered herein to be withdrawn and the case dismissed; and the court being othterwise fully advised in the premises; now, therefore, it is hereby:

ORDERED, that the plea of guilty previously entered herein be and the same is hereby withdrawn, and it is

FURTHER ORDERED, that the charges against the defendant are hereby dismissed with prejudice and he is relieved from any further legal obligations in this case.

DATED this 28th day of February, 1994.

JUDGE

MICHAEL A. FROST
MARKET PLACE TWO, SUITE 200
2001 WESTERN AVENUE
SEATTLE, WASHINGTON 98121
(206) 728-7300

Presented by:

Michael A. Frost #5142
Attorney for Defendant

Copy received:

9100 2
Deputy Prosecuting Attorney

MICHAEL A. FROST
MARKET PLACE TWO, SUITE 200
2001 WESTERN AVENUE
SEATTLE, WASHINGTON 98121
(206) 728-7300

STATE OF WASHINGTON )
) ss.
COUNTY OF KING )

I, M. JANICE MICHELS, Clerk of the Superior Court of the State of Washington, for the County of King, do hereby certify that I have compared the foregoing copy with the original instrument as the same appears on file and of record in my office, and that the same is true perfect transcript of said original and of the whole thereof. In TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Superior Court at my office in Seattle on the day of MAR 2 3 1994.

M. JANICE MICHELS, Superior Court Clerk

By _____
Deputy Clerk

EXHIBIT B 3 of 3

# APPENDIX E

FILED
2002 JAN 22 AM 8:59
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

CERTIFIED
Copy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

MATTHEW H. RICHARDSON,

Defendant.

No. 93-1-02331-2 SEA

ORDER VACATING RECORD OF CONVICTION AND ORDER TO SEAL COURT FILE (KCPD No. 9234786)

THIS MATTER having come on regularly for hearing before the undersigned upon motin of the Defendant, Matthew H. Richardson, for an order vacating the record of conviction herein and sealing the court file herein, the Court finding that all of the statements contained in the Certification filed with the Motion herein are true and correct, that compelling circumstances exist to support the sealing of the court file, ~~that proper notice under GR 15 has been given~~, and that the Defendant qualifies for the requested relief, and the Court otherwise being fully advised in the premises, now, therefore, it is hereby

ORDERED that the conviction record under this cause number is hereby vacated (and now constitutes nonconviction data) and shall not be included in criminal history for purposes of determining a sentence in any subsequent conviction; that the Defendant shall



ORIGINAL

*JUDITH S. DUBESTER*
*Attorney at Law*
*710 33rd Avenue*
*Seattle, Washington 98122*
*(206) 324-9457*

be released from all penalties and disabilities resulting from this matter, including the right to own and possess firearms, and that for all purposes, including responding to questions related to employment, the Defendant may truthfully state that he has never been convicted of an offense in the above-entitled matter, and it is further

ORDERED that the court file herein shall be sealed.

DONE IN OPEN COURT this 22nd day of January, 2002.

BRIAN GAIN, JUDGE

Presented by:

Judith S. Dubester 2476
Attorney for Defendant

Approved by:

Dave Gilbertson 3/027
Deputy Prosecuting Attorney

/

/

/

/

/



*JUDITH S. DUBESTER*
*Attorney at Law*
*710 33rd Avenue*
*Seattle, Washington 98122*
*(206) 324-9457*

STATE OF WASHINGTON }
County of King } ss.

I, PAUL L. SHERFEY, Clerk of the Superior Court of the State of Washington, for the County of King, do hereby certify that I have compared the foregoing copy with the original thereof, and the same is a true and correct transcript therefrom and of the whole thereof.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the Seal of said Court this

JAN 22 2002 day of _____

PAUL L. SHERFEY, Clerk

By _____ Deputy Clerk

J. SHAULIS

EXHIBIT D 3 of 3

# APPENDIX F

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

| | |
|---|---|
| STATE OF WASHINGTON,<br><br>Plaintiff,<br><br>v.<br><br>MATTHEW H. RICHARDSON,<br><br>Defendant | CLERK'S ACTION REQUIRED<br><br>No. 93-1-02331-2 SEA<br><br>ORDER TO SEAL SUPERIOR COURT FILE PURSUANT TO GR15 |

THIS MATTER having come on regularly for hearing before the undersigned upon motion of the Respondent pursuant to GR 15, the court having been duly advised by Certification of the pertinent behavior and circumstances of the Respondent subsequent to the within-referenced incident and finding the that statements contained in the Certification are true and correct, and reasonable attempts having been made to notify the victims of the offense of this hearing, now, therefore, it is hereby

ORDERED that the King County Superior Court Clerk's records and files herein, including those on microfilm, shall be sealed .

DONE IN OPEN COURT this 20th day of February, 2002.

BRIAN GAIN, JUDGE

/



ORIGINAL

*JUDITH S. DUBESTER*
*Attorney at Law*
*710 33rd Avenue*
*Seattle, Washington 98122*
*(206) 324-9457*

Presented by:

JUDITH S. DUBESTER 2476
Attorney for Respondent

Copy received; appearance waived:
(re Prosecutor's Office only) approved as to form only.

Dep. Pros. Attorney

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*JUDITH S. DUBESTER*
*Attorney at Law*
*710 33rd Avenue*
*Seattle, Washington 98122*
*(206) 324-9457*

EXHIBIT C 2 of 2

# APPENDIX G

# THE SUPREME COURT
STATE OF WASHINGTON

RONALD R. CARPENTER
SUPREME COURT CLERK

SUSAN L. CARLSON
DEPUTY CLERK / CHIEF STAFF ATTORNEY

TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov


March 11, 2011

Michele Lynn Earl-Hubbard
Christopher Roslaniec
Allied Law Group, LLC
2200 6th Avenue, Suite 770
Seattle, WA 98121-1855

Hon. Daniel Satterberg
King County Prosecutor's Office
516 Third Avenue, W-554
Seattle, WA 98104

Klaus Otto Snyder
Kelly J. Faust Sovar
Snyder Law Firm, LLC
920 Alder Avenue, Suite 201
Sumner, WA 98390-1401

Re: Supreme Court Cause No. 85665-6 - State of Washington v. Matthew H. Richardson
King County Superior Court Cause No. 93-1-02331-2 SEA

Counsel:

I have reviewed comments from counsel as to the proper designation of this matter. The order of which review is sought denied a motion to unseal a court file. The Petitioner argues that the order is a final judgment covered by RAP 2.2(a)(1), but I must disagree. I do not believe the denial of a motion to unseal would be considered a final judgment as that term is used in the rule, nor does that decision come within any of the other types of decisions listed in RAP 2.2(a) of which review may be sought as a matter of right. Therefore, pursuant to RAP 5.1(c), the notice of appeal will be redesignated as a notice for discretionary review. However, this determination is made without prejudice to the parties raising the issue to the Court Commissioner in the briefing referenced below.

In regard to the comment by the Respondent that he wishes to seek review of other portions of the order if review is granted, I would refer counsel to RAP 2.4(a) and 5.1(d).

Pursuant to RAP 6.2(b), Petitioner must serve and file a motion for discretionary review with the Clerk of this Court by not later than March 28, 2011. A motion for discretionary review is governed by the motion procedure established in RAP 17.1 through RAP 17.7.

In addition, pursuant to RAP 4.2(b), the Petitioner must serve and file a statement of grounds for direct review by not later than March 28, 2011.

Sincerely,

Susan L. Carlson
Supreme Court Deputy Clerk

SLC: daf